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Annette W. Jarvis, Utah Bar No. 1649
 RAY QUINNEY & NEBEKER P.C.
 36 South State Street, Suite 1400
 P.O. Box 45385
 Salt Lake City, Utah 84145-0385
 Telephone: (801) 532-1500
 Facsimile: (801) 532-7543
 Email: ajarvis@rqn.com

Lenard E. Schwartz, Nevada Bar No. 0399
 Jeanette E. McPherson, Nevada Bar No. 5423
 SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 E-Mail: bkfilings@s-mlaw.com

Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT**DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA SECURITIES, LLC,
 Debtor.

**DEBTORS' OBJECTION TO
 APPLICATION FOR ATTORNEY
 FEES AND COSTS OF ROBERT C.
 LEPOME**

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

**Date: March 15, 2007
 Time: 9:30 a.m. PST**

SCHWARTZER & MCPHERSON LAW FIRM
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Tel: (702) 228-7590 · Fax: (702) 892-0122

USA Commercial Mortgage Company, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, USA Capital First Trust Deed Fund, LLC and USA Securities, LLC (collectively the “Debtors”) in the above captioned jointly administered cases, hereby object to the Application for Attorney Fees and Costs (the “Application”) filed by Robert C. LePome (“LePome”) [Docket No. 2816]. LePome seeks compensation from the bankruptcy estate for services rendered in the amount of \$173,512.50 and the reimbursement of costs in the amount of \$3,671.70 “based upon services rendered by [LePome] for several Direct Lenders....” Application p. 2. The only legal authority LePome cites in support of his Application is 11 U.S.C. § 503(b)(4). However, LePome does not qualify for reimbursement of its attorney fees and expenses under the Bankruptcy Code. For the reasons set forth below, the Court should deny the Application.

ARGUMENT

I. LEPOME WAS NOT EMPLOYED UNDER 11 U.S.C. § 327 AND IS NOT ENTITLED TO COMPENSATION UNDER 11 U.S.C. §330

The Bankruptcy Code allows for “a professional person employed under section 327 or 1103” to be awarded “reasonable compensation for actual, necessary services rendered...; and reimbursement for actual, necessary expenses” 11 U.S.C. §330. It is undisputed that LePome is not entitled to compensation under Section 330 because LePome was never employed under Section 327 or 1103.

II. LEPOME IS NOT ENTITLED TO AN ADMINISTRATIVE CLAIM UNDER 11 U.S.C §503(b)(4)

Unable to request fees under 11 U.S.C. §330, LePome turns to 11 U.S.C. §503(b)(4). “Section 503(b)(4) provides administrative expense status for the cost of certain professional services incurred by an entity whose expenses are allowable under section 503(b)(3).” 4 Collier on Bankruptcy §503.11 (15th ed. 2006). However, an “administrative expense priority is available under section 503(b)(4) only to an entity whose expenses are allowable under section 503(b)(3).... An entity cannot seek reimbursement of professional fees under section 503(b)(4) unless it has previously qualified or concurrently qualifies for reimbursement of expenses under section

503(b)(3).” Id. at §503.11[2]. Thus, attorney fees may be compensated only in if the services were rendered by an attorney that represents one of the types of entities described in section 503(b)(3). See, e.g., In re Gurley, 235 B.R. 626, 635 (Bankr. W.D. Tenn. 1999) (explaining that the “ability to recover attorney fees and expenses logically depends on whether the fees have been incurred by an entity who falls into one of the categories established in section 503(b)(3)...”); Lebron v. Mechem Financial (In re Lebron), 27 F.3d 937, 943 (3d Cir. 1994) (stating that “§503(b)(4) authorizes awards of legal and accounting fees only in the situations coming within the scope of §503(b)(3)...”).

LePome has made no showing, nor could he, that either he or any party he represents qualified for an administrative expense claim under 11 U.S.C. §503(b)(3). Neither LePome nor any of his clients have filed an involuntary petition (see §503(b)(3)(A)); recovered transferred or concealed property for the benefit of the estate (see §503(b)(3)(B)); assisted in the prosecution of a criminal offense relating to the Debtors (see §503(b)(3)(C)); made a substantial contribution to the case (see §503(b)(3)(D)); is a custodian (see §503(b)(3)(E)); or is a member of an official committee and incurred expenses in connection with that committee service (see §503(b)(e)(F)).

III. LEPOME HAS NOT MADE ANY SUBSTANTIAL CONTRIBUTION

Although not clearly articulated in the Application, LePome alludes to a possible substantial contribution claim as the basis for his Application. The Ninth Circuit

has stated that the principal test of substantial contribution is “the extent of benefit to the estate.” In re Christian Life Ctr., 821 F.2d at 1373; see also Pierson & Gaylen v. Creel & Atwood (In re Consol. Bancshares, Inc.), 785 F.2d 1249, 1253 (5th Cir. 1986) (reaffirming that “services which substantially contribute to a case are those which foster and enhance, rather than retard or interrupt the progress o[f] reorganization”).

Cellular 101, Inc. v. Channel Comm., Inc. (In re Cellular 101, Inc.), 377 F.3d 1092, 1096 (9th Cir. 2004). Therefore, in assessing whether there has been substantial contribution courts should look to the benefit that was conferred upon the estate. However, LePome has made no showing that his efforts have fostered or enhanced the reorganization process. Rather than a substantial contribution to the case, the various positions taken by LePome for his clients in this case have retarded and interrupted the reorganization process, and have resulted in the estates incurring

substantial unnecessary costs that did not benefit the Debtors' estates in any way.

IV. LEPOME CANNOT REQUEST COMPENSATION ON ITS OWN BEHALF

The Application states that "Robert C. LePome, Esq., ... moves the Court" to allow the requested attorneys fees and costs under 11 U.S.C. § 503(b)(4). Application, p. 2. The Application does not state that LePome's clients are seeking to be reimbursed for their expenses and fees paid to LePome. A "professional is entitled to look only to its client for payment and not to the estate.... The right to compensation, therefore, belongs to the client and not to the professional." 4 Collier on Bankruptcy §503.11[4] (15th ed. 2006). LePome's clients have made no request reimbursement under 11 U.S.C. §503(b), and would have no basis for doing so in any event. Therefore, the Application should be denied.

CONCLUSION

For the reasons discussed above, the Debtors respectfully request that the Court deny the Application in its entirety. LePome is not entitled under the Bankruptcy Code to reimbursement of his expenses or compensation for his services rendered to his clients, and has in any case failed to provide any substantial contribution to this case. The Debtors further request that the Court grant such other relief as is just and proper.

DATED this 2nd day of March, 2007.

/s/ Jeanette E. McPherson

Lenard E. Schwartz, Nevada Bar No. 0399

Jeanette E. McPherson, Nevada Bar No. 5423

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Las Vegas, Nevada 89146

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RAY QUINNEY & NEBEKER P.C.

36 South State Street, 14th Floor

P.O. Box 45385

Salt Lake City, Utah 84145-0385

Email: ajarvis@rqn.com

Attorneys for Debtors and Debtors-in-Possession

CERTIFICATE OF SERVICE

1. On March 2, 2007 I served the following document(s):

a. **DEBTORS' OBJECTION TO APPLICATION FOR ATTORNEY FEES AND COSTS OF ROBERT C. LEPOME**

2. I served the above-named document(s) by the following means to the persons as listed below:

☒ a. **By ECF System:**

ROBERT C. LEPOME rlepome@cox.net, smstanton@cox.net

☒ b. **By United States mail, postage fully prepaid:**

Robert LePome, Esq.
330 S. Third Street, #1100B
Las Vegas, NV 89101

☐ c. **By Personal Service**

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. **By direct email (as opposed to through the ECF System)**

Based upon the written agreement to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. **By fax transmission**

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. **By messenger**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on: March 2, 2007

LIA DORSEY

(Name of Declarant)

/s/ LIA DORSEY

(Signature of Declarant)